

of new programming, and undermining the ability of both the broadcast and cable industries to identify and satisfy the public demands for programming.

23. The Commission's decision will especially undermine the ability of rural viewers, who cannot receive over-the-air broadcasts, to have their views and desires reflected (through ratings) in programming decisions, and it will have a disproportionate and adverse impact on the production, distribution and availability of minority-oriented programming. As the Commission is well aware, producers of minority programming must rely to a far greater extent than other program producers on distribution over low power broadcast stations and carriage by nearby cable systems. Allowing cable systems to strip Nielsen's SID codes associated with minority programming will impair the ability of minority program producers to evaluate the acceptability or viewership of their program offerings, thus disproportionately and substantially undercutting their ability to attract crucial advertising dollars, and consequently impacting the distributors of such programming, whether cable or broadcast, in like manner.

**VI. THE COMMISSION SHOULD DEFINE "PROGRAM-RELATED" CONSISTENT WITH ITS PAST DETERMINATIONS, OR SHOULD AT LEAST INCORPORATE A PROVISION REQUIRING CARRIAGE OF SID CODES.**

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24. The Commission has at least two alternatives to avoid the difficulties noted in this Petition. First, the Commission could define "program-related" under

the Cable Act as it has already defined that term under the Communications Act, without relying on the concept of "related images" under the copyright laws. Under the Commission's established Communications Act definition, "program-related" signals would include those -- specifically including SID codes -- in which there is a "direct correlation of the signal with the [main-channel programming] that is being broadcast at the same time." *Program-Related Signals in the VBI, supra*, 43 Fed. Reg. at 49333. Alternatively, the Commission could reaffirm its decision to adopt the

Copyright Act's concept of "related images" in defining "program related material"

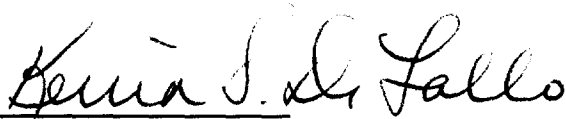
alike -- should be carried by cable systems whenever the programming in which SID codes are incorporated is carried.<sup>20/</sup>

### CONCLUSION

For the foregoing reasons, A.C. Nielsen Company respectfully requests that the Commission reconsider its *Order* in this proceeding as described herein.

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<sup>20/</sup> In this regard, Nielsen restates the request noted in its Comments that cable systems should be required to carry SID codes that are incorporated into carried programming, regardless of whether the programming is carried pursuant to "must-carry" obligations or voluntary retransmission consents. Nielsen Comments at 4, 13-15.

## CERTIFICATE OF SERVICE

I, Kimberly Balthrop, a secretary in the law firm of Gardner, Carton & Douglas, hereby certify that copies of the foregoing "**Petition for Reconsideration**" have been mailed by first class United States mail, postage prepaid, on this 3rd day of May, 1993 to the foregoing parties of record:

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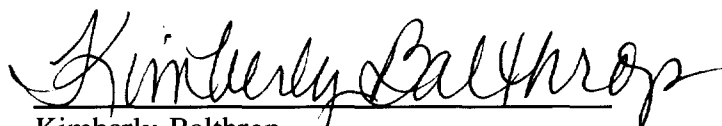
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